STATE OF MICHIGAN

COURT OF APPEALS

ONTONAGON RURAL COUNTY ELECTRICAL ASSOCIATION, Petitioner-Appellant, v TOWNSHIP OF ALLOUEZ, Respondent-Appellee.	UNPUBLISHED October 17, 2006 No. 265605 Tax Tribunal LC No. 00-296073
ONTONAGON RURAL COUNTY ELECTRICAL ASSOCIATION, Petitioner-Appellant, v TOWNSHIP OF SHERMAN, Respondent-Appellee.	 No. 265606 Tax Tribunal LC No. 00-296098

Before: Whitbeck, C.J., and Murphy and Smolenski, JJ.

PER CURIAM.

In this tax dispute, petitioner Ontonagon Rural County Electrical Association (the Association) appeals as of right a Michigan Tax Tribunal (MTT) order denying its challenge to respondents Township of Allouez's and Township of Sherman's assessments of personal property taxes. This dispute arises out of Allouez's and Sherman's factoring of contributions in aid of construction (also known as "CIAC") received by the Association in calculating the true cash value of its personal property. We affirm.

I. Basic Facts And Procedural History

The Association is a rural electric cooperative. It owns electric utility transmission and distribution infrastructure, i.e., poles, wiring, etc., in various townships and counties throughout Michigan. Incident to its provision of utilities, the Association installs this infrastructure and retains ownership over it. The Michigan Public Service Commission dictates that, where

atypical transmission and distribution infrastructure installation is required, utilities must charge the benefited landowners directly for the cost of the installation. These installation fees are considered contributions in aid of construction.

Transmission and distribution infrastructure is subject to personal property taxes in Michigan.[1] In calculating its personal property taxes for the tax years at issue in this dispute, the Association utilized the personal property reporting form for electric cooperatives published by the State Tax Commission. Included in the calculations was the requirement that contributions in aid of construction be valued and added to the true cash value of the Association's transmission and distribution property. The Association challenged this inclusion of contributions in aid of construction before the State Tax Commission, and then on appeal to the Tax Tribunal, both of which denied the challenge.

II. Tax Tribunal Jurisdiction

A. Standard Of Review

The Association argues that the Tax Tribunal erred in holding that its challenge raised a valuation issue and was, therefore, improperly filed under MCL 211.154. We review a decision of the Tax Tribunal "'to determin[] whether the tribunal erred in applying the law or adopted the wrong principle.'"[2] The Tax Tribunal's "'factual findings are conclusive if supported by competent, material[,] and substantial evidence on the whole record.'"[3]

B. Taxable Status Challenges Versus Valuation Challenges

Utilities are subject to personal property taxation owed to the various municipalities in which their relevant property resides.[4] MCL 211.154 permits an assessed entity to challenge the taxation before the State Tax Commission, providing in part as follows:

> (1) If the state tax commission determines that property subject to the collection of taxes under this act . . . has been incorrectly reported or omitted for any previous year, but not to exceed the current assessment year and 2 years immediately preceding the date the incorrect reporting or omission was discovered and disclosed to the state tax commission, the state tax commission shall place the corrected assessment value for the appropriate years on the appropriate assessment roll. . . .
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[1] MCL 211.8(g).

[2] *Czars, Inc v Dep't of Treasury*, 233 Mich App 632, 637; 593 NW2d 209 (1999) (citation omitted).

[3] *Id.* (citation omitted).

[4] MCL 211.1; MCL 211.8(g); MCL 211.14.

> (7) A person to whom property is assessed under this section may appeal the state tax commission's order to the Michigan tax tribunal.[5]

This section applies to the extent "property thought to be taxable has been incorrectly reported or omitted."[6] That is, a taxpayer may invoke MCL 211.154 where the taxable status of the property is disputed.[7]

MCL 211.30 and MCL 205.735 likewise permit a taxpayer to challenge an assessment, initially before a local board of review and thereafter to the Tax Tribunal. However, these provisions apply where property is concededly subject to assessment but valuation of the property to determine the assessment is disputed.[8] MCL 211.30(4) provides in part as follows:

> At the request of a person whose property is assessed on the assessment roll or of his or her agent, and if sufficient cause is shown, the board of review shall correct the assessed value or tentative taxable value of the property in a manner that will make the valuation of the property relatively just and proper under this act.

MCL 205.735(2) provides in part as follows:

> A proceeding before the tribunal is original and independent and is considered de novo. For an assessment dispute as to the valuation of property or if an exemption is claimed, the assessment must be protested before the board of review before the tribunal acquires jurisdiction of the dispute.

The failure of a taxpayer to protest an assessment before the board of review deprives the Tax Tribunal of jurisdiction to hear the challenge.[9] In such circumstances, the Tax Tribunal is bound to recognize the jurisdictional defect and dismiss the petition.[10]

Contributions in aid of construction are not property.[11] Rather they are

> "a financial contribution to offset total construction costs of a project. . . . CIAC is an 'upfront' payment from a third party to a utility that the utility thereafter

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[5] MCL 211.154(1), (6)-(7).

[6] *Gen Motors Corp v State Tax Comm*, 200 Mich App 117, 120; 504 NW2d 10 (1993); see also *Detroit v Norman Allen & Co*, 107 Mich App 186, 191-192; 309 NW2d 198 (1981).

[7] *Norman Allen*, *supra* at 191-192.

[8] See *id.*

[9] *Covert Twp v Consumers Power Co*, 217 Mich App 352, 355; 551 NW2d 464 (1996).

[10] *Electronic Data Systems Corp v Flint Twp*, 253 Mich App 538, 544; 656 NW2d 215 (2002).

[11] *Wayne Co v State Tax Comm* (*Wayne Co II*), 261 Mich App 174, 232; 682 NW2d 100 (2004); *Wayne Co v State Tax Comm* (*Wayne Co I*), unpublished opinion of the Michigan Tax Tribunal, decided April 5, 2002 (Docket No. 273674), slip op p 59.

> spends, together with its own money, to construct [transmission and distribution] property. CIAC is required by the MPSC not to benefit the utility, but rather to protect existing utility ratepayers (i.e., other customers) from having their rates increased because new customers may require special, more-expensive-to-install property than that of the typical, existing ratepayers. For example, developers may wish to put in underground electrical service to make a development more attractive. Customers who have large lots might require longer utility lines that would be more costly to build than shorter lines to typical lots. These developers or customers with large lots may make a CIAC payment to reduce the net cost to the utility that would otherwise be passed on to other customers."[12]

Conversely, transmission and distribution infrastructure is clearly property.[13] It is clearly subject to personal property taxation.[14]

By virtue of this distinction, we conclude the Tax Tribunal lacked jurisdiction over this dispute because the Association's challenge was improperly pursued. The property at issue is transmission and distribution infrastructure. Whether financed by contributions in aid of construction or not, its taxable status is simply not in question, given MCL 211.8(g).[15] The Association's challenge revolves around the State Tax Commission's requirement that contributions in aid of construction be valued in the Association's personal property statements filed with local assessors. This is a valuation question because it involves whether the contributions the Association receives increase the value of its transmission and distribution property. The Association's challenge was, therefore, improper under MCL 211.154. It should have been pursued under MCL 211.30 and MCL 205.735. Accordingly, the Association's failure to challenge the assessment before Allouez's and Sherman's boards of review deprived the Tax Tribunal of jurisdiction over this dispute.[16]

The Association argues that the status of contributions in aid of construction and whether contributions in aid of construction may be properly subject to assessment are the issues that are actually relevant in this dispute. However, we conclude that this argument misconstrues the character of contributions in aid of construction. For property taxation purposes in Michigan, the true cash value of personal property must be determined and the property must be assessed according to this determination.[17] "True cash value is synonymous with fair market value . . . ."[18] There are three generally accepted approaches for determining true cash value: "(1) cost

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[12] *Wayne Co II*, *supra* at 232, quoting *Wayne Co I*, *supra* at slip op p 59.

[13] MCL 211.8(g).

[14] MCL 211.1; MCL 211.8(g).

[15] See *Norman Allen*, *supra* at 191-192.

[16] *Covert Twp*, *supra* at 355.

[17] Const 1963, art 9, § 3.

[18] *Samonek v Norvell Twp*, 208 Mich App 80, 84; 527 NW2d 24 (1994).

less depreciation, (2) sales comparison, and (3) capitalization of income."[19] The State Tax Commission must establish standards for local assessment of property taxes to promote the uniform taxation of property.[20] In assessing utility transmission and distribution property for personal property taxation, the State Tax Commission has directed that local assessors utilize the cost-less-depreciation approach to determining a property's true cash value, considering the transmission and distribution property's original cost depreciated utilizing multiplier tables to approximate value over time.[21]

In *Wayne Co II*, this Court reviewed various municipalities' challenge to multiplier tables promulgated by the State Tax Commission and utilized by local assessors in assessing personal property for taxation. The municipalities argued in part that the State Tax Commission improperly exempted property financed by contributions in aid of construction from its consideration in developing the multiplier tables.[22] Incident to this challenge, the Tax Tribunal observed as follows:

> "Michigan electric and gas utilities only earn income on the portion of the property financed by their own funds, i.e., net book cost. . . . If there were two utilities with [transmission and distribution] property having identical net book values and expected income, and all other factors were the same except that only one utility had property financed in part by CIAC, the [transmission and distribution] property of the utilities would have identical values. This is because CIAC does not affect net book cost, it does not help the utility or any purchaser of utility property earn more income than that supported by the net book cost of its property."[23]

Responding to the municipalities' argument that this was a de facto determination that contributions in aid of construction property has zero value, while nevertheless generating income, this Court reasoned as follows:

> We fully recognize and appreciate the point the municipalities are making, i.e., realistically, CIAC-financed property is generating income in some form or manner, and that the income was necessarily included in the utilities' net operating income, yet net book values for CIAC-financed property was not considered. Because of regulation, however, the utilities are not allowed a rate of return on CIAC-financed property, so on the books that property does not and

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[19] *Id*.

[20] See MCL 211.10e; see also Const 1963, art 9, § 3.

[21] *Wayne Co II*, *supra* at 180-184; State Tax Commission Assessor's Manual, § 12, p 12-2.

[22] *Wayne Co II*, *supra* at 195; see also *Wayne Co I*, *supra* at slip op p 59.

[23] *Wayne Co II*, *supra* at 232-233, quoting *Wayne Co I*, *supra* at slip op pp 59-60.

> cannot generate any income, and any income actually generated by CIAC-financed property must be recaptured elsewhere.[24]

In *Michigan Consolidated Gas Co v Michigan Tax Comm*, this Court addressed an assessment of personal property owned by a utility.[25]

> [A]t the hearing it was brought out that the taxpayer had not reported any amount for service pipe lines, viz: the pipe line from the customer's property line to the meter. The State tax commission requested the taxpayer to account for the cost to it of such service pipe lines. . . . The service pipe lines in question appear to be paid for both by the customers and the Michigan Consolidated Gas Company, appellant. On oral argument it was indicated that an estimate of division of costs, was 70% paid by the customers and 30% paid by appellant. It was this 30% only that the State tax commission took into consideration in making the assessment.[26]

This Court remanded the dispute to the State Tax Commission because it had not properly considered this issue of this assessment. On remand, the State Tax Commission concluded the pipelines were properly subject to personal property taxation.[27]

The extent of required contributions in aid of construction depends on the unique circumstances involving proposed transmission and distribution property.[28] In some circumstances, as in *Michigan Consolidated Gas Co*, the utility at issue will fund a portion of the cost associated with transmission and distribution property construction. In other circumstances, the landowner may be required to assume the cost of development exclusively. Because the true cash value of transmission and distribution property is determined by utilizing the cost-depreciation approach,[29] the utility's "cost" for true cash value purposes will vary accordingly, as will the concomitant true cash value calculation.

This is itself a valuation question: the appropriate true cash value to be attributed to transmission and distribution property for assessment purposes. While in certain circumstances the utility's "cost" of transmission and distribution property will be zero, as the burden of development will have been placed on the landowner, this is not effectively a determination that the transmission and distribution property is not subject to assessment. Rather, it is a

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[24] *Id*. at 234-235.

[25] *Michigan Consolidated Gas Co v Michigan Tax Comm*, 4 Mich App 33; 143 NW2d 606 (1966).

[26] *Id*. at 35-36.

[27] See *Continental Cablevision of Michigan, Inc v City of Roseville*, 430 Mich 727, 749; 425 NW2d 53 (1988).

[28] See *Wayne Co II*, *supra* at 232.

[29] *Wayne Co II, supra* at 180-184; State Tax Commission Assessor's Manual, § 12, p 12-2.

determination that the property has no taxable value. This corresponds with the State Tax Commission's declaration of its treatment of contributions in aid of construction, issued after *Wayne Co I*, that "STARTING IN 2004, assessors shall not include Contributions in Aid of Construction (CIAC) when valuing the assets of electrical cooperatives."[30] The Association's argument that it is the status of contributions in aid of construction that is at issue in this dispute is therefore without merit. To what extent contributions in aid of construction should be valued in assessing personal property taxes is the central issue presented here. Accordingly, the Tax Tribunal lacked jurisdiction over the Association's appeal because the Association failed to follow the statutory procedures to perfect its assessment challenge.

The Tax Tribunal initially dismissed the Association's appeal by concluding that it lacked jurisdiction over the dispute. On reconsideration, the Tax Tribunal concluded it had jurisdiction but dismissed the Association's appeal on alternative grounds. We conclude that this latter determination was an erroneous application of legal principles.[31] Nevertheless, "it is axiomatic that we will not reverse a trial court's decision if the correct result is reached for the wrong reason."[32] The Association's appeal was properly dismissed. Because we find this issue dispositive, we decline to address the Association's remaining arguments.

Affirmed.

/s/ William C. Whitbeck
/s/ William B. Murphy
/s/ Michael R. Smolenski

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[30] State Tax Commission Bulletin 2003-13, § I (emphasis in original).

[31] See *Czars, Inc*, *supra* at 637.

[32] *Computer Network, Inc v AM Gen Corp*, 265 Mich App 309, 313; 696 NW2d 49 (2005).